

ulate somebody's property, take their property, is valid. I can see the press and others are bored by this, but this is the single most important question you can be asked in this entire hearing.

One of the tests they apply is whether the object that is being served by the law, taking the property, is an object that falls within the scope of police power. And the other, as you well know, is whether the means chosen to legislate accomplishes an objective that is reasonably related to the reason they say they are doing this thing.

Now, Judge, the Court's current approach is to give the legislature a broad latitude in both these areas—the area of determining whether or not the means is an appropriate means and whether or not the objective being served is an objective that falls within the police power. That is the state of the law now, and they essentially use a rational basis test for a much lower standard.

So my question is this: Do you agree with the state of the law as it is now with regard to property, as I understood you to say it? Or do you agree with Senator Brown who said it is wrong the way we are doing it now; property and the test applied to the taking of property should be elevated to the same level as other constitutional rights—that is, the case he cited, the right to privacy in *Moore*?

What is your position?

Judge THOMAS. Senator, I think that I indicated to Senator Brown as well as, I believe, to the question from Senator DeConcini on equal protection analysis, that the current manner of equal protection analysis I have no quarrel with.

The CHAIRMAN. But do you have a quarrel—I am sorry. Go ahead.

Judge THOMAS. With respect to the area of the current law, in the area of taking, I have no basis to quarrel with that either.

The CHAIRMAN. That is what Senator Brown was talking about.

Judge THOMAS. Well, I thought that he recognized that we disagreed.

The CHAIRMAN. OK. Good. That is all I want to make sure because—

Judge THOMAS. I thought that was recognized.

The CHAIRMAN. Because I thought Senator Brown—Senator Brown, please correct me if I am wrong. I thought Senator Brown said, well, I understand, we agree, and, you know, property should have a higher scrutiny and should be treated with more respect in the law, et cetera. I thought he thought you agreed.

Senator BROWN. I was doing my best to get him to agree.

The CHAIRMAN. But you are aware that on the record under oath he does not agree with that.

Senator BROWN. And was very disappointed that he disagreed with Professor Tribe. [Laughter.]

The CHAIRMAN. Well, if you have an opportunity to read the case that Tribe was talking about, you will know that it is not related to the issue that we are talking about.

Anyway, now—in that I don't mean to defend Professor Tribe. I don't care one way or another whether Professor Tribe is right or wrong. It is just that it doesn't relate directly to this issue.

Now, Judge, the reason I bothered to take you through all of this I think you know well, and that is that it is a big deal at least to